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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/807,500	02/27/1997	MARC ZEICHER	236007	5090
20995	7590	03/05/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			MCGARRY, SEAN	
			ART UNIT	PAPER NUMBER
			1635	36

DATE MAILED: 03/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

08/807,500

**Applicant(s)**

ZEICHER, MARC

**Examiner**

Sean R McGarry

**Art Unit**

1635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-16, 21, 22 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-16, 21, 22, and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

The instant application was suspended on 11/6/02 due to a potential interference. At that time all claims were indicated as allowable. However, the prosecution in the application is reopened to address the issues below.

Claims 3-16, 21, 22, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7, 14 and 16 depend from canceled claim 1, rendering the claims vague and indefinite.

Claim 3 recites "the virus" on line 2. There is no antecedent basis for this terminology in the claims.

Claim 4 recites "the virus nucleic acid sequence". There is no antecedent basis for this terminology in the claims.

In claim 10, line 6, it is recited "the nucleotide sequences". There is no antecedent basis for this terminology in the claims. Since no specific nucleic acid sequences have been disclosed or recited for the recited nucleic acid sequences it is unclear what would be "the" nucleic acid sequence referred to, for example.

Claim 11 recites "fragment" on line 2. Since claim 10 recited "fragment" in at least two contexts, it is not particularly clear what is intended with this terminology.

Claim 12 recites "labeled with the aid of radioisotopes which emit . . ." This language is not particularly clear since it is not clear, for example, if the agent is itself labeled or if some other label is attached facilitated by such an isotope.

Claim 13 recites "capable of inhibiting tumor neoangiogenesis". There is no antecedent basis for this terminology in the claims.

Claim 22 recites at its start, "The recombinant vector" There is no antecedent basis for this terminology in the claims.

Claim 28 recites "the transfected cell at line 7. There is no antecedent basis for this terminology in the claims.

All the claim that depend from claim 10 and begin with the recitation "the nucleotide sequence of" are not particularly clear since claim 10 recites nucleotide sequence" in at least 3 different contexts.

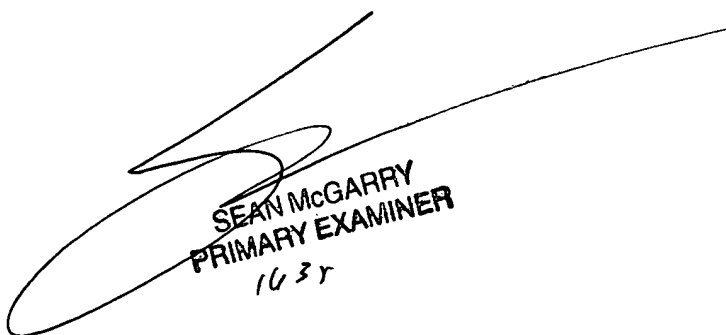
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean R McGarry whose telephone number is (571) 272-0761. The examiner can normally be reached on M-Th (6:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John LeGuyader can be reached on (571) 272-0760. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SRM



SEAN McGARRY  
PRIMARY EXAMINER  
1635